

ORIGINAL

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1 COUNTY COURT OF THE STATE OF NEW YORK

2 COUNTY OF ONONDAGA : CRIMINAL TERM

3

4 THE PEOPLE OF THE STATE OF NEW YORK,

5

vs.

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8 TONY W. JENNINGS,

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Defendant. NYSID 08709143L

10

11

Criminal Courts Building
Syracuse, New York 13202

12

13

May 19, 2016

14

B e f o r e :

15

HONORABLE WALTER W. HAFNER, JR,
Judge

16

A p p e a r a n c e s :

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WILLIAM J. FITZPATRICK ESQ.
District Attorney, Onondaga County
BY: JEFFREY J. SCHIANO, ESQ.
Assistant District Attorney

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JOHN J. LO FARO, ESQ.
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Defendant Present in Person

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Reported by:

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Ann A. Makowiec
Supreme Court Reporter

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JUN 30 2017

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COLLOQUY

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1 THE COURT: All right. People versus Tony
2 Jennings. So we have one witness today and
3 there's a problem I heard with the grand jury
4 minutes. So there will be no cross examination
5 today --

6 MR. SCHIANO: We have one witness, your
7 Honor. We can take his testimony today. It's up
8 to the Court and it's up to Mr. LoFaro whether or
9 not he wants to begin his cross examination, and
10 then if there's any discrepancies in the grand
11 jury minutes, continue the cross examination; or
12 if he just wants to do it altogether on a
13 different day, I guess that's up to the Court and
14 Mr. LoFaro. I have no objection to either way.

15 THE COURT: All right. How do you want to
16 proceed, Mr. LoFaro?

17 MR. LO FARO: I apologize, your Honor, I
18 was talking to Mr. Jennings. What -- what's the
19 issue, Judge, want to do what?

20 THE COURT: You weren't told?

21 MR. SCHIANO: Judge, the -- we are
22 awaiting the grand jury minutes. There was one
23 witness that has testified in the grand jury,
24 that's Officer Decker. Those minutes were
25 requested in March, specifically March 25th of

COLLOQUY

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1 2016. However, Rose Laun from our office has had
2 to leave the office for medical reasons and we
3 don't have a date certain that she's going to
4 return. So there are several outstanding grand
5 jury transcripts that aren't completed yet, this
6 happens to be one of them. So as I indicated to
7 the Court, it's the practice of the other parts
8 here that we could start the hearing, Mr. LoFaro
9 can cross examine the witness as he sees fit, we
10 hold the hearing open and I'll provide Mr. LoFaro
11 the grand jury minutes as soon as I have them. He
12 can review the grand jury minutes, and if he
13 wishes to continue his cross examination, we can
14 recall Officer Decker and continue his cross
15 examination at that point. If he feels that
16 there's no need to continue the cross examination
17 after he reviews the grand jury minutes, we can
18 close the hearing at that point.

19 MR. LO FARO: That's fine, your Honor,
20 we'll move forward today.

21 THE COURT: Okay. Call -- he's a rebuttal
22 witness?

23 MR. SCHIANO: Yes, your Honor. The People
24 call Officer Jeremy Decker.

25 COURT OFFICER: Could you state and spell

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1 your name for the Court, please?

2 THE WITNESS: Jeremy Decker. J E R E M Y
3 D E C K E R.

4 J E R E M Y D E C K E R, called as a witness on behalf
5 of the People, having been duly sworn, testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. SCHIANO:

9 Q. Officer Decker, good morning.

10 A. Morning.

11 Q. Are you employed, sir?

12 A. Syracuse Police.

13 Q. Tell the Court how long you've worked for the
14 Syracuse Police Department?

15 A. Over ten years.

16 Q. And currently what is your rank and assignment
17 within the Syracuse Police Department?

18 A. Police officer, I'm assigned to a CRT.

19 Q. What is a CRT?

20 A. It's a Crime Reduction Team.

21 Q. For the record purposes, just tell us briefly,
22 what is the purpose of the Crime Reduction Team?

23 A. We patrol the highest crime areas in the city;
24 mainly focus on gangs, drugs and guns.

25 Q. And how long have you worked in the Crime

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1 Reduction Team?

2 A. Since last June.

3 Q. All right. And is one of the areas that you
4 patrol as -- as a member of the Crime Reduction Team
5 the area The Pioneer Homes?

6 A. Yes, sir.

7 Q. Tell us why that is?

8 A. It's one of the highest crime areas in the
9 city, weekly shootings.

10 Q. And has The Pioneer Homes -- do you have any
11 agreements with The Pioneer Homes about vehicles
12 parked in their parking lot?

13 A. As far as I know, the Syracuse Public Housing
14 has given Syracuse Police the authority to approach
15 any persons found on the property to ascertain what
16 their lawful business is.

17 Q. All right. And is 100 Radisson Court part of
18 that Radisson Homes area?

19 A. Yes.

20 Q. I'm sorry, part of The Pioneer Homes area?

21 A. Yes.

22 Q. I'd like to direct your attention to January
23 5th of 2016, do you recall that date?

24 A. Yes.

25 Q. Were you working on that date?

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1 A. Yes.

2 Q. Did you become involved in a drug investigation
3 at 100 Radisson Court?

4 A. Yes.

5 Q. That's in the City of Syracuse?

6 A. Yes, sir.

7 Q. All right. Tell the Court, to the best of your
8 recollection, how you became involved in that
9 investigation?

10 A. My partner and I were in the hundred block of
11 Radisson Court. We saw a suspicious vehicle. It was
12 a black 2003 Acura. It was parked with two subjects.
13 When we pulled up, illuminated my spotlight on the
14 vehicle. I noticed that the two occupants turned
15 around, looked at us and then immediately began making
16 furtive movements to their lower bodies.

17 Q. All right. Now, is it your regular course -- I
18 guess in your regular course of responsibilities, is
19 it common for you to illuminate cars in that area?

20 A. It's a habit, I always do it.

21 Q. And you do that at night?

22 A. Yes.

23 Q. Why do you do that?

24 A. So I can see who I'm looking at, whether
25 they're walking on the street or they're in the

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7

1 vehicle.

2 Q. And tell us were -- were you driving a marked
3 car or unmarked?

4 A. It was marked.

5 Q. Who was driving?

6 A. I was.

7 Q. Tell us what happens as you approach this
8 vehicle?

9 A. So I approached the driver's side of the
10 vehicle, my partner approached the passenger side. I
11 immediately observe in plain view near the center
12 console area a black digital scale with a white
13 residue on top of it.

14 Q. Okay. I want to back you up a little bit.
15 When you say approach the vehicle, that's poor
16 language by me. As you enter the parking lot in your
17 vehicle, your police vehicle, right, you at some point
18 you noticed this -- this other what you call a
19 suspicious vehicle, correct?

20 A. Yes.

21 Q. Do you remember what kind of car it was?

22 A. It was a black 2003 Acura.

23 Q. All right. And was it dark out?

24 A. Yes.

25 Q. All right. And when you noticed this vehicle,

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1 did you notice at that time whether there was anybody
2 in the vehicle?

3 A. Yes.

4 Q. All right. And is it at that point that you
5 lit it up?

6 A. Yes.

7 Q. When I say lit it up, you shined your spotlight
8 on the vehicle?

9 A. Yes.

10 Q. What happens once you shine your spotlight on
11 the vehicle?

12 A. I see the two occupants turn around, look at us
13 and then immediately start marking furtive movements
14 towards their lower bodies.

15 Q. Tell me about those movements?

16 A. They're just quick, sneaky movements as if
17 they're trying to conceal something.

18 Q. Conceal something where?

19 A. Towards their lower bodies.

20 Q. Okay. And do you stop your car at that point?

21 A. Yes.

22 Q. Tell us where specifically you park your
23 vehicle or stop your vehicle?

24 A. I believe the front end of our vehicle was at
25 an angle toward the rear driver's side of that

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9

1 vehicle.

2 Q. All right. Now -- and you stopped -- that's
3 where you stopped your vehicle?

4 A. Yes.

5 Q. Did you put it in park?

6 A. Yes.

7 Q. And you exit the vehicle?

8 A. Yes.

9 Q. All right. Now, at that point was your
10 vehicle -- when you say it's angled towards the
11 driver's side of the suspect vehicle, correct?

12 A. Yes.

13 Q. So the front end of your vehicle is parked at
14 an angle towards the driver's side of the suspect
15 vehicle?

16 A. I believe so, yes.

17 Q. Okay. And at that point, do you know, would
18 the suspect vehicle been able to get out if it wanted?

19 A. Yeah, he could have backed out.

20 Q. All right. Tell us how he would have been able
21 to back out?

22 A. Just would have had to cut the wheel really
23 hard.

24 Q. So he wasn't blocked in?

25 A. No.

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10

1 Q. Fair to say?

2 A. Fair to say.

3 Q. All right. Now, you exit the vehicle?

4 A. Yes.

5 Q. You approached the driver's side you said,
6 right?

7 A. Yes.

8 Q. And who approached the passenger side?

9 A. Officer Ettinger.

10 Q. And approximately how long from the time you
11 shined your spotlight on that vehicle until you
12 approached the driver's side of that vehicle?

13 A. I didn't time it. Less than a minute.

14 Q. Okay. And as you approach the driver's side of
15 the vehicle, what, if anything, did you see?

16 A. A black digital scale with a white residue.

17 Q. Did you see that immediately?

18 A. Yes.

19 Q. Where was it?

20 A. In the center console area.

21 Q. And have you seen a scale like that before?

22 A. Yes.

23 Q. Approximately in your career how many times?

24 A. Hundreds.

25 Q. All right. And based on your training and

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11

1 experience, what is a scale like that used for?

2 A. Weighing drugs.

3 Q. All right. Did you notice whether or not the
4 scale had any sort of residue on it?

5 A. Yes, a white residue.

6 Q. All right. And have you seen a white residue
7 like that before?

8 A. Yes.

9 Q. Specifically, have you ever seen a white
10 residue like that on a digital scale?

11 A. Yes.

12 Q. And in your training and experience, what is --
13 what -- what did you recognize that to be?

14 A. Cocaine.

15 Q. All right. Now, after you make that
16 observation, what do you do next?

17 A. I recovered the scale.

18 Q. Before you did anything, you recovered the
19 scale?

20 A. Yes.

21 Q. Tell us how you did that?

22 A. Reached in through the window.

23 Q. The window was open I'm assuming?

24 A. Yes.

25 Q. Okay. You recovered it how?

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1 A. Reached in the vehicle and took possession of
2 it.

3 Q. Okay. What did you do next?

4 A. I alerted Officer Ettinger that I located a
5 scale with a white residue on it, then I asked the
6 occupants of the vehicle if anyone possessed or used
7 illegal drugs.

8 Q. Okay. And what, if anything, did they tell
9 you?

10 A. The front passenger, Willie Jones, told me that
11 he had just used cocaine in the vehicle but didn't
12 have any left.

13 Q. Okay. Did the defendant, Tony Jennings, say
14 anything to you in response to that question?

15 A. I believe he told me no.

16 Q. Okay. And tell us what happens next?

17 A. Officer Ettinger had Mr. Jones exit the
18 vehicle. He conducted a search of him for illegal
19 drugs.

20 Q. Do you know if any illegal narcotics were found
21 on Mr. Jones?

22 A. No.

23 Q. Okay. What did you do next?

24 A. I had Mr. Jennings exit the vehicle and I
25 conducted -- began to conduct a search of him.

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1 Q. And tell us what happens when you began that
2 search?

3 A. As I began to search Mr. Jennings, he ran from
4 my grasp. I pursued him and tackled him to the
5 ground.

6 Q. Okay. And approximately how far did Mr.
7 Jennings get before you were able to detain him?

8 A. I didn't measure. I'd say approximately ten
9 feet.

10 Q. From me to you?

11 A. That's fair.

12 Q. Okay. And tell us what happens once -- tell us
13 how that occurs? How do you get him, do you tackle
14 him?

15 A. I tackled him from behind.

16 Q. What happens next?

17 A. We began ordering him to put his hands behind
18 his back, his left hand and arm were tucked under his
19 body, appeared that he was trying to push up off the
20 ground and keep going. Officer Ettinger came around
21 to help me, and we were subsequently able to force his
22 hands and arms behind his back and into handcuffs.

23 Q. Okay. And once you got him into handcuffs,
24 tell us what happens next?

25 A. I finished my search of Mr. Jennings. I

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1 located in his front left pants pocket a clear knotted
2 section of plastic containing a beige chunky substance
3 and a hundred and ten dollars in US currency.

4 Q. Okay. That plastic bag containing the beige
5 substance, have you seen a plastic bag like that
6 before?

7 A. Yes.

8 Q. Approximately how many times?

9 A. Hundreds.

10 Q. What did it appear to be?

11 A. Crack cocaine.

12 Q. Okay. The substance inside appeared to be
13 crack cocaine?

14 A. Yes.

15 Q. And at some point was a field test conducted on
16 that substance?

17 A. Yes.

18 Q. Are you trained to use that field test?

19 A. Yes.

20 Q. Used it before?

21 A. Yes, hundreds.

22 Q. Hundreds of times?

23 A. (Nods head.)

24 Q. All right. What was the result of the field
25 test?

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1 A. It was a positive reaction for cocaine.

2 Q. And at some point was it weighed?

3 A. Yes.

4 Q. What was the aggregate weight of the cocaine,
5 if you recall?

6 A. Four grams.

7 Q. All right. Did you find anything else during
8 your search?

9 A. I believe Mr. Jennings had two cell phones and
10 another hundred and fifty dollars in the center
11 console area.

12 Q. Okay. Once you completed your search, tell us
13 what happens next?

14 A. Completed our search, Mr. Jennings was placed
15 in the rear of our patrol vehicle, his vehicle was
16 towed and Mr. Jones was released on scene.

17 Q. Okay. At some point did you transport Mr.
18 Jennings to the Onondaga County Justice Center?

19 A. Yes.

20 Q. That's the jail?

21 A. Yes.

22 Q. While there, did you inquire as to whether he
23 was employed?

24 A. Yes, we had a conversation. I'm not sure
25 exactly where it was.

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1 Q. Okay. And what, if anything, did Mr. Jennings
2 tell you about his employment status?

3 A. From what I remember, he told me he was in the
4 asbestos field and that he specifically worked for
5 Hotel Syracuse but it was the off season, so he was
6 selling cocaine to pay the bills.

7 Q. And when he made that statement to you, did you
8 ask him any questions about whether or not he sold
9 cocaine?

10 A. No.

11 Q. Did you ask him any questions about whether he
12 was involved in any sort of illegal activity?

13 A. No.

14 Q. When you first -- I'm going to ask you a couple
15 more questions. When you first approach the vehicle
16 with your vehicle before you even got out of your
17 vehicle, okay, and you illuminated that car, was the
18 passenger ever outside the vehicle at that point?

19 A. No.

20 Q. So you're absolutely certain at that point both
21 occupants are inside the vehicle, yes?

22 A. Yes.

23 Q. Do you recall a gas can anywhere around?

24 A. No.

25 MR. SCHIANO: All right. I have no

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1 further questions. Thank you.

2 THE COURT: Do you want to cross now or
3 wait for the grand jury minutes?

4 MR. LO FARO: We'll continue now, your
5 Honor, with the understanding that if there's
6 further cross examination that we feel is
7 necessary after our review of the grand jury
8 minutes, that we could continue at that point.

9 THE COURT: Okay.

10 CROSS EXAMINATION

11 BY MR. LO FARO:

12 Q. Morning, officer, how are you?

13 A. Good.

14 Q. Officer, you said that you saw -- you saw a
15 scale that was in plain view on the console, correct?

16 A. In the center console area.

17 Q. Center console. And that you reached into an
18 open window?

19 A. Yes.

20 Q. Was that window open when you approached the
21 vehicle?

22 A. I believe so.

23 Q. And when was this arrest?

24 A. January 5th, I believe.

25 Q. Any idea what the weather was like at that

J. DECKER - CROSS BY MR. LO FARO

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1 point in time?

2 A. It was probably cold.

3 Q. Yet the windows were open at all times
4 according to you?

5 A. When I walked up, that window was open.

6 Q. And again, with your experience, you said that
7 it appeared that there was a scale it may have been
8 consistent with weighing drugs for the purposes of
9 sale with what appeared to be cocaine residue on it?

10 A. Yes.

11 Q. You tested the drugs that you had ultimately
12 recovered from Mr. Jennings, is that correct?

13 A. I believe myself and Officer Ettinger weighed
14 and tested the drugs together.

15 Q. What was your results of that test?

16 A. It was positive for cocaine.

17 Q. How about the weight?

18 A. Four grams.

19 Q. How about the scale, did you test that for what
20 you claim was cocaine residue?

21 A. No, sir, I didn't have a cocaine wipe that day.

22 Q. Did you make an arrest with regard to a drug
23 paraphernalia charge?

24 A. No, sir.

25 Q. Is the scale in and of itself illegal?

J. DECKER - CROSS BY MR. LO FARO

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1 A. Depends on what the subject possesses.

2 Q. Could that scale have been used for legal
3 purposes?

4 A. Possibly.

5 Q. Okay. Now, there's been some testimony about
6 where your vehicle was parked. Am I to understand
7 from your testimony that you parked at such an angle
8 that my client was not detained?

9 A. I believe he could have backed out.

10 Q. Was he free to leave?

11 MR. SCHIANO: Objection.

12 THE COURT: Sustained.

13 Q. Could you describe once again where your
14 vehicle was parked in proximity to his?

15 A. I believe the front of my vehicle was at an
16 angle towards the driver's side rear of his vehicle.

17 Q. Would you say it was partially blocking his
18 vehicle?

19 A. It's possible.

20 Q. Why did you park it in such a way?

21 A. Well, when the vehicle came to our attention, I
22 had to use my spotlight; and to use the spotlight
23 correctly, you have to be at a certain angle.

24 Q. You couldn't have parked your vehicle to the
25 side and approached?

J. DECKER - CROSS BY MR. LO FARO

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1 A. It's a possibility.

2 Q. You stated that upon entering the premises, the
3 parking lot, you saw what appeared to you to be a
4 suspicious vehicle, correct?

5 A. Yes.

6 Q. It was your testimony this was a 2003 black
7 Honda Accord, correct?

8 A. It was a 2003 black Acura.

9 Q. Acura, okay. I can't think of a more
10 nondescript vehicle, what was it about that vehicle
11 that caused you to believe that was a suspicious
12 vehicle?

13 A. Well, sir, as soon as we saw it, it was parked,
14 occupied, they made quick glances back at us and
15 immediately made furtive movements towards their lower
16 body; and my experience, those movements are
17 indicative of someone, some persons --

18 Q. Well, I apologize, I don't mean to cut you off
19 but we'll get to the furtive movements next; but when
20 you originally stated I believe, correct me if I'm
21 wrong, that you noticed a suspicious vehicle, this is
22 before the furtive movements, so my question is what
23 about that vehicle, that 2003 Acura, black Acura, one
24 of the most common cars on the road, what was it about
25 that car that you believed was suspicious?

J. DECKER - CROSS BY MR. LO FARO

21

1 A. I was just answering that question, you
2 interrupted me.

3 Q. No, no, I apologize, I said we'll get to the
4 furtive movements, but you said the vehicle was
5 suspicious in and of itself. So I'm wondering what
6 about that vehicle made it seem suspicious to you?

7 A. Sir, everything happens really fast. We pulled
8 in, immediately saw this vehicle was occupied and
9 parked, immediately look at us, start making furtive
10 movements. It all happens at the same time.

11 Q. Okay. So under that theory, is any vehicle
12 that's parked in a public parking lot with two
13 occupants in it a suspicious vehicle?

14 A. Negative.

15 Q. And -- okay. So this happened quickly, let's
16 go back to when you actually pulled into the parking
17 lot. As you pulled into the parking lot, how big
18 would you say this parking lot was?

19 A. No idea, sir.

20 Q. How many cars would you say could park in this
21 particular lot?

22 A. No idea, sir.

23 Q. Would you say it was more than a hundred?

24 A. Negative.

25 Q. Fifty, less than fifty?

J. DECKER - CROSS BY MR. LO FARO

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1 A. I don't know.

2 Q. As you pulled into the parking lot, other than
3 Mr. Jennings' vehicle, were there any other vehicles
4 in the parking lot?

5 A. I believe there are a few.

6 Q. Were there any vehicles to the right of Mr.
7 Jennings' vehicle as you pulled in behind him?

8 A. I don't believe so.

9 Q. Any vehicles to the left?

10 A. I don't recall.

11 Q. When you approached the vehicle, and I believe
12 what your testimony was, to the driver's side and the
13 window was down?

14 A. Mm-mm.

15 Q. Did you say anything to Mr. Jennings at that
16 point as you approached?

17 A. Right away?

18 Q. Yeah.

19 A. I can't recall, sir.

20 Q. Did you ask him any questions?

21 A. I did after I recovered the scale.

22 Q. Okay. And what was the first time you
23 perceived what you claim are furtive movements?
24 Where -- where was your vehicle at that point or where
25 were you at that point when you observed what you

J. DECKER - CROSS BY MR. LO FARO

23

1 claim were furtive movements?

2 A. We were in the parking lot approaching the
3 vehicle.

4 Q. How far away from the vehicle were you?

5 A. No idea, sir.

6 Q. Was it pitch black?

7 A. No idea, sir.

8 Q. Was it dark?

9 A. Yes.

10 Q. It was evening?

11 A. Yes.

12 Q. Okay. Were you ten yards from the vehicle,
13 twenty yards from the vehicle, thirty yards from the
14 vehicle?

15 A. I didn't measure it.

16 Q. Okay. How about in car lengths?

17 A. I don't know.

18 Q. Okay. Were you in your vehicle or were you out
19 of your vehicle when you noticed what you perceived to
20 be furtive movements?

21 A. I was in my vehicle.

22 Q. Okay. And were both occupants of the vehicle
23 making what you described as furtive movements?

24 A. Yes.

25 Q. Okay. There was an individual in the passenger

J. DECKER - CROSS BY MR. LO FARO

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1 side of the vehicle, correct?

2 A. Yes.

3 Q. He was ultimately searched?

4 A. Yes.

5 Q. Did he have anything on him?

6 A. Nothing was found.

7 Q. Okay. Yet he was making furtive movements?

8 A. Yes.

9 Q. But he had no drugs on him?

10 A. None was found.

11 Q. And there was a scale in plain view sitting on
12 the console?

13 A. Yes.

14 Q. Okay. Could you describe what those furtive
15 movements were in detail?

16 A. As I said before, they were just sneaky, quick
17 movements towards their lower bodies.

18 Q. Okay. But you don't have any idea how far away
19 from the vehicle you were when you observed these?

20 A. No, sir.

21 Q. Were they seated in the vehicle?

22 A. I believe so, yes.

23 Q. And you were behind the vehicle?

24 A. Yes.

25 Q. So how could you see into their laps and

J. DECKER - CROSS BY MR. LO FARO

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1 beneath their wastes making furtive movements if you
2 couldn't see them?

3 A. As I said, they were towards his lower bodies,
4 their lower bodies.

5 Q. He could have been doing anything, correct?

6 A. Correct.

7 Q. There was no crime in progress, was there?

8 A. Not that I know of.

9 Q. Okay. They weren't breaking any laws as they
10 were parked there, were they?

11 A. I don't believe so.

12 Q. Just a couple of guys sitting in a parked
13 vehicle?

14 A. And one possessed drugs.

15 Q. As you approached -- as you approached to the
16 driver's side of the vehicle, where -- where was your
17 partner at that point?

18 A. On the passenger side.

19 Q. And what did he do, if you recall?

20 A. Say again?

21 Q. What did he do, if you recall, when he
22 approached the vehicle?

23 A. I don't know, you'd have to ask him.

24 Q. You didn't observe him doing anything?

25 A. I was focused on Mr. Jennings.

J. DECKER - CROSS BY MR. LO FARO

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1 Q. Okay. You said when you approached the vehicle
2 that you didn't ask him any questions, did you ever
3 ask him any questions?

4 A. Yes, sir.

5 Q. What were the questions that you asked him?

6 A. I recall asking both occupants if they
7 possessed or used illegal drugs.

8 Q. And what was their response?

9 A. Mr. Jones told me that he had just used cocaine
10 in the vehicle and he didn't have any left. I believe
11 Mr. Jennings told me no.

12 Q. So this is high crime area, correct?

13 A. Yes, sir.

14 Q. And safe to assume that these guys have been
15 around the block a couple of times?

16 A. I don't know.

17 Q. And your testimony is that Mr. Jones said
18 voluntarily, yeah, I just got done doing drugs?

19 A. Yes, sir, happens all the time.

20 Q. Okay. All right. Other than the fact that you
21 claim that they moved their arms towards their mid
22 sections, anything else that you can articulate that
23 would, in your mind, create suspicion other than that?

24 A. No, sir.

25 Q. Did you ever ask Mr. Jennings for any

J. DECKER - CROSS BY MR. LO FARO

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1 identification?

2 A. I don't recall but I'm sure I did.

3 Q. Did he ever produce a driver's license?

4 A. I don't recall.

5 Q. Did he ever produce an insurance card or a
6 registration?

7 A. I do not recall.

8 Q. When you approached the vehicle and you were
9 still in your vehicle, could you see the two occupants
10 in the vehicle from your vantage point inside your
11 vehicle?

12 A. Could I see them?

13 Q. What I'm asking is when you pulled in you were
14 in your car, correct?

15 A. Yes.

16 Q. You observed the defendant's vehicle, correct?

17 A. Yes.

18 Q. At what point did you realize there were two
19 occupants of the vehicle? Were you still in your
20 vehicle?

21 A. Are you asking me for a distance?

22 Q. No, I'm asking you if you were in your car or
23 or out of your car when you noticed there were two
24 guys in there?

25 A. I believe I already answered it, I was in my

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1 vehicle.

2 Q. My client ever explain to you what he was doing
3 there?

4 A. I do not recall, sir.

5 Q. When you first approached, was he polite, did
6 he communicate with you intelligently, let you know
7 what he was doing there?

8 A. I believe he was polite.

9 Q. Did you ever fear for your safety with regard
10 to Mr. Jennings?

11 A. I don't know Mr. Jennings, it was our first
12 meeting.

13 Q. Did he make any aggressive movements towards
14 you?

15 A. No, sir.

16 Q. You stated that you didn't make any charges for
17 paraphernalia, did you cite him for any traffic
18 infractions at all?

19 A. No, sir.

20 Q. So the time of the stop there, the stop was
21 devoid of any illegal activity at all at that point?

22 MR. SCHIANO: Object to the reference.

23 There is no stop here.

24 THE COURT: Sustained.

25 Q. At the point that you pulled in behind the

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1 vehicle at an angle, behind their vehicle at an angle
2 partially, blocked them in and approached the vehicle,
3 did you make any -- did you issue any traffic
4 citations?

5 A. I did not, sir. I believe I just answered
6 that.

7 Q. At what point, officer, did you deem it
8 appropriate to search Mr. Jennings? At what point did
9 you believe he was stripped of his fourth amendment
10 right to privacy, at what point in time?

11 A. I believe when I found the scale with the white
12 residue on it.

13 Q. Which he wasn't charged with, correct?

14 A. Correct.

15 Q. Which was never tested for cocaine, correct?

16 A. I don't know if the lab tested it or not.

17 Q. When you illuminated the vehicle, either you or
18 your partner, what was the source of that
19 illumination?

20 A. Our vehicle spotlight.

21 Q. Did you ever use flashlights?

22 A. Normally we walk up to vehicles with our flash
23 lights, yes.

24 Q. Do you remember what Mr. Jennings was wearing?

25 A. No, sir.

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1 Q. Did he have a coat on?

2 A. I do not recall, sir.

3 Q. You said that the cocaine that you found was in
4 freestyle form, correct?

5 A. Yes, sir.

6 Q. Is that codified in the Penal Code, are you
7 aware, freestyle form?

8 MR. SCHIANO: Object to the relevance of
9 this line of questioning at this point. The way
10 the cocaine was packaged has nothing to do with
11 the stop.

12 THE COURT: Sustained.

13 Q. When you say freestyle, that's speculation, is
14 it not, that's an opinion, correct?

15 A. From my experience, freestyle is a word used on
16 the street in how their specific drug is packaged.

17 Q. But you don't presume to be inside the head of
18 Mr. Jennings, correct?

19 A. I don't presume to be in his head.

20 Q. With regard to where that cocaine is going,
21 what's happening with it, that's speculation?

22 A. I don't presume to be in his head, no.

23 Q. When you stated that you saw the two occupants
24 making furtive movements, would you have been able to
25 do that in the absence of a spotlight at that time of

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1 night, under those conditions?

2 A. Possibly.

3 Q. And how would you have been able to do that if
4 it was dark and they were in a vehicle?

5 A. I work midnight shift for a long time. There
6 are many instances where I saw furtive movements
7 without a spotlight.

8 Q. But you'd have to admit at that time of night
9 your visibility would have to have been limited,
10 correct?

11 A. I believe a little bit.

12 Q. You stated that the apartment complex or
13 whomever has an agreement that you have cart blanche
14 to approach vehicles and inquire as to what they're
15 doing there?

16 A. It's come to our attention that they have given
17 us authority to approach any persons to ascertain what
18 their business is.

19 Q. Ascertain what their business is?

20 A. Yes.

21 Q. So inquire as to what they're doing there,
22 correct?

23 A. Yes, sir.

24 Q. Does ascertaining what their business is
25 illuminating their vehicle?

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1 A. If you need to illuminate a vehicle to have
2 furtherance of your job, then, yes, it's a tool.

3 Q. So illuminating a vehicle is the same thing as
4 asking someone what they're doing there?

5 A. No.

6 Q. Okay. But that's okay?

7 A. It's okay to illuminate a vehicle?

8 Q. Yes.

9 A. Is that what you're asking me?

10 Q. Yeah.

11 A. Of course.

12 Q. Okay. And is that what you believe you have
13 authorization from the apartment complex to do?

14 A. What's that?

15 Q. Illuminate the vehicle?

16 A. We illuminate vehicles, yes.

17 Q. Okay. If there's an articulable suspicion,
18 correct?

19 A. We illuminate persons, vehicles, it's a tool
20 that we use in our job.

21 Q. Okay. They don't give you the right to frisk
22 people, do they, the apartment complex?

23 A. What's that?

24 Q. The apartment complex itself, their -- their
25 directive issue that you are okay in questioning

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1 individuals doesn't extend to frisking individuals,
2 doesn't supersede them of their fourth amendment
3 rights, does it?

4 A. No, sir.

5 Q. Did you ever give a written report with regard
6 to what the weight of the cocaine was?

7 A. Say again?

8 Q. Did you ever give -- did you ever give a
9 written report -- did you ever reduce that to one of
10 your police documents or records how much cocaine was
11 there by weight?

12 A. Are you asking me if I weighed --

13 Q. Yes.

14 A. -- and put that in my report?

15 Q. Yes.

16 A. Yes.

17 THE COURT: Maybe we ought to do the
18 sentencing of Miss Davis so that you can review
19 whatever you want to review so we don't keep Mr.
20 Baska waiting any longer. He's been here waiting
21 since nine o'clock.

22 MR. LO FARO: That's fine. I don't want
23 to hold him up, if that's the Court's pleasure.

24 THE COURT: You look like you're
25 reviewing --

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1 MR. LO FARO: Just looking over some final
2 questions, Judge.

3 THE COURT: Let's do the sentencing.
4 You're able to do that?

5 MR. SCHIANO: I can do it. I don't have
6 the file. I can do it without the file, it's not
7 a big deal.

8 (Whereupon, the case was adjourned and
9 subsequently recalled.)

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J. DECKER - CROSS BY MR. LO FARO

1 CROSS EXAMINATION CONTINUED:

2 BY MR. LO FARO:

3 Q. Officer, let me begin by saying I apologize for
4 being redundant and asking the same questions. I know
5 they can be frustrating, but I just want to get the
6 totality of the circumstances so I understand it, the
7 Court understands it and we know how exactly how this
8 occurred. So if I am redundant, I apologize. I'd
9 like to go back to your approach of the vehicle. It
10 was your testimony that you approached the driver's
11 side, correct?

12 A. Yes.

13 Q. And I asked you where your partner was, and was
14 it your testimony that he approach the passenger side?

15 A. Police Officer Ettinger?

16 Q. Yeah.

17 A. Yes.

18 Q. Okay. Did you both remain on your respective
19 sides of the vehicle at all times?

20 A. I believe Officer Ettinger came over when I was
21 struggling with Mr. Jenkins on the ground.

22 Q. Prior thereto, did you ever go to the passenger
23 side of the vehicle?

24 A. Negative.

25 Q. Did you ever assist in the search of suspect

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1 Jones?

2 A. No.

3 Q. So that search was conducted entirely by
4 Officer Ettinger?

5 A. Yes.

6 Q. In approaching this vehicle, you mentioned
7 several times you used the word furtive. If I can
8 just talk about that, ask you about that just for a
9 second and then we're almost done. Those furtive --
10 those furtive movements, I believe it was you said
11 they made movements towards their mid sections?

12 A. Yeah, lower bodies, yes.

13 Q. Lower bodies, okay. And -- and you said that
14 they were sneaky, and what are you trying to say by
15 that they were sneaky, those movements, using that
16 adjective, sneaky?

17 A. Well, they're quick. A lot of times they're
18 out of sight. It's as if they're trying to hide
19 something before we can get up on the vehicle.

20 Q. I drop my cell phone almost everyday and I've
21 got to go reaching for it in my car, something of that
22 nature, is any movement sneaky?

23 A. No, sir.

24 Q. Could be equally consistent with almost -- just
25 about anything, correct?

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1 A. I don't know.

2 Q. So, again, we're talking about speculation and
3 opinion again, correct?

4 A. It's in my experience.

5 Q. Okay. Now, normally when you say they made
6 these sneaky, furtive movements below the waste, why
7 would they be doing it?

8 A. Trying to hide an illegal item.

9 Q. Trying to hide an illegal item, okay; but the
10 only items that were recovered were the drugs that
11 were smuggling in the pants pocket of the defendant
12 and a scale that was sitting right out there in plain
13 view, correct?

14 A. Correct.

15 Q. So with all those furtive movements, wild
16 speculations, all those furtive movements, nothing was
17 secreted, was it?

18 A. The drugs were in his pocket.

19 Q. Which is where they were the entire time,
20 correct?

21 A. I don't know.

22 MR. SCHIANO: Objection. That calls for
23 speculation. This officer has absolutely --

24 THE COURT: Sustained.

25 MR. LO FARO: Just one minute, your Honor.

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1 Q. Officer, you said that this was a suspicious
2 vehicle, you said that there were furtive movements.
3 Again, all I'm going to ask you is this could have
4 also been a vehicle with two buddies in it, sitting in
5 a parking lot, not doing anything other than having a
6 conversation --

7 MR. SCHIANO: Objection, asked and
8 answered.

9 Q. -- is that correct?

10 THE COURT: Sustained.

11 MR. LO FARO: I don't have any further
12 questions, your Honor.

13 THE COURT: Redirect?

14 MR. SCHIANO: Nothing further, Judge. I
15 thank you for your time, officer. Have a safe
16 day.

17 THE COURT: When do you understand those
18 minutes will be done?

19 MR. SCHIANO: Judge, and that was the
20 issue. The problem is Rose Laun is out for
21 medical leave. She was supposed to be in
22 yesterday to try to see where we are at with some
23 things. I don't have a date certain of when she's
24 coming back. I spoke with Rob Moran from the
25 Grand Jury Bureau yesterday who is sort of in a

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1 way her supervisor. He's expecting her to come in
2 tomorrow to -- so we can sit down and see what's
3 out there and what we have time on. So I'll have
4 a better answer for you tomorrow. If she does
5 come in tomorrow, which I'm expecting her to, I'm
6 going to let her know that we need these as a
7 priority. I expect within a week.

8 THE COURT: So you'll send a letter out
9 with the minutes?

10 MR. SCHIANO: I will.

11 THE COURT: When they'll be available to
12 everybody?

13 MR. SCHIANO: I'll deliver them to the
14 Court myself and I will have a copy hand delivered
15 to Mr. LoFaro as well.

16 THE COURT: Mr. LoFaro, let us know if you
17 want to have Officer Decker come back or not.
18 Nobody listens to me, I'm just going to leave.

19 MR. SCHIANO: Thank you, Judge.

20 MR. LO FARO: Thank you, your Honor.

21 COURT OFFICER: Court is adjourned.

22 * * * *

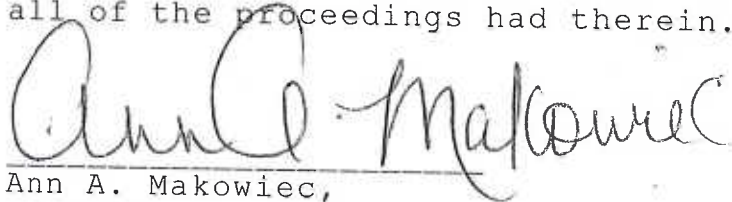
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C E R T I F I C A T E

This is to certify that I am a Senior Court Reporter of the Fifth Judicial District; that I attended and reported the above-entitled proceedings; that I have compared the foregoing with my original minutes taken therein, and that it is a true and correct transcript thereof and all of the proceedings had therein.



Ann A. Makowiec,
Official Court Reporter

Dated: June 28, 2017